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## DIGEST OF OTHER RECENT VIRGINIA DECISIONS.

(Head notes prepared by M. P. Burks, State Reporter.)

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CRANFORD PAVING CO. v. BAUM AND OTHERS.—Decided at Richmond, April 23, 1896.—*Riely, J.*

1. CONDEMNATION PROCEEDINGS—*Public roads—Damages—Report of commissioners.* In a proceeding to condemn a right of way for a public road the report of a commissioner to assess damages to the land owner is to be taken as conclusive on the question of damages until it is shown to the satisfaction of the court to be insufficient.

2. CONDEMNATION PROCEEDINGS—*View by commissioners—Report of commissioners—Weight given to—Case at bar.* In condemnation proceedings to acquire land for a public use the law lays great stress upon the matter of the view, and great weight is attached to the report of the commissioners to assess damages. In addition to other evidence they have the evidence of their own senses, and it should be a very clear case of inadequate compensation to justify an interference by the court with the finding of the commissioners. In the case at bar the evidence taken before the commissioners was returned with their report and no oral evidence was introduced before the court. The evidence was conflicting, but was sufficient to justify the finding of the commissioners. It was proper, therefore, for the court to decline to disturb the finding of the commissioners.

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ENGLEMAN v. ENGLEMAN.—Decided at Staunton, September 27, 1899.—*Harrison, J.* Absent, *Keith, P.*

1. APPEAL AND ERROR—*Suit in chancery—Incompetent evidence.* This court will not reverse a decree in a chancery suit merely because incompetent and illegal evidence appears in the record. It will consider only the legitimate evidence and determine the rights of the parties upon that.

2. MARRIAGE AND DIVORCE.—*Alimony—Counsel fees—Case in judgment.* Under the facts in this case the husband is not entitled to a divorce either for adultery or desertion, and the wife is not precluded by her deed from claiming an allowance for counsel fees in the suit for divorce brought against her by her husband. No such suit was had in view when the deed was made.

3. MARRIAGE AND DIVORCE.—*Alimony—Counsel fees in Court of Appeals—Husband's liability.* The measure of the husband's liability to pay the expenses of the wife's defence to a suit for divorce brought by him depends upon his ability to meet them, and, in the absence of anything in the record to guide this court, it will not make an allowance for fees of counsel in this court, but will adhere to the sum fixed by the trial court.

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ELDRED AND OTHERS v. ELDRED.—Decided at Richmond, November 16, 1899.—*Cardwell, J.*

1. MARRIAGE—*How proved—Reputation, declarations and conduct—Presumption.* Marriage may be proved in civil cases, other than actions for seduction, by reputa-